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9 Attorneys for Defendants
10 SANTA CLARA COUNTY DISTRICT
11 ATTORNEY GEORGE KENNEDY and
12 ANN MILLER RAVEL, in their Official
13 Capacities

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16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA
18

19 VIDEO SOFTWARE DEALERS) No. C05-4188 RMW (RS)
20 ASSOCIATION and ENTERTAINMENT)
21 SOFTWARE ASSOCIATION,)
22 Plaintiffs,)
23 v.)
24 ARNOLD SCHWARZENEGGER, in his)
25 official capacity as Governor of the State) Crtrm.: 6
26 of California; BILL LOCKYER, in his) Judge: Honorable Ronald M. Whyte
27 official capacity as Attorney General of)
28 the State of California; GEORGE)
29 KENNEDY, in his official capacity as)
30 Santa Clara County District Attorney,)
31 RICHARD DOYLE, in his official)
32 capacity as City Attorney for the City of)
33 San Jose, and ANN MILLER RAVEL, in)
34 her official capacity as County Counsel)
35 for the County of Santa Clara,)
36 Defendants.)
37

38 I.
39

40 INTRODUCTION

41 The hearing for the preliminary injunction in this action has been set for December 2,
42 2005. Defendants Santa Clara County District Attorney George Kennedy and Santa Clara
43 County Counsel Ann Ravel ("County defendants") have been sued in their official capacities.

1 The County defendants request that the hearing date be continued one week to December 9,
 2 2005, because their counsel is unavailable on December 2, 2005. Local Rule 7-10.

3 **II.**

4 **DISCUSSION**

5 On October 7, 2005, Governor Schwarzenegger signed AB 1179 into law, which restricts
 6 the sale of a narrow set of violent videotapes to minors. The law will go into effect on January
 7 1, 2006. On October 17, 2005, plaintiffs Video Software Dealers Association and
 8 Entertainment Software Association (“plaintiffs”) filed a complaint for declaratory and
 9 injunctive relief. Plaintiffs named the following individuals, acting in their official capacity, as
 10 defendants: Governor Arnold Schwarzenegger, Attorney General Bill Lockyer, San Jose City
 11 Attorney Richard Doyle, Santa Clara County District Attorney George Kennedy, and Santa
 12 Clara County Counsel Ann Miller Ravel. The hearing date for plaintiffs’ request for a
 13 preliminary injunction has been set for December 2, 2005.

14 Deputy County Counsel Kathryn Zoglin has been assigned to write the brief opposing the
 15 preliminary injunction and to appear at the hearing on behalf of the County defendants. She is
 16 handling this matter because there is no one available on the Litigation Team to handle it. Ms.
 17 Zoglin is not available on December 2, 2005. She is handling a labor arbitration matter that was
 18 set in June 2005 and cannot be continued. The arbitration will likely last the entire day. She is
 19 available on December 9, 2005.

20 Deputy Attorney General Zackery Morazzini, who represents Governor Schwarzenegger
 21 and Attorney General Lockyer; and Deputy City Attorney Fabela, who represents San Jose City
 22 Attorney Doyle, are available on December 9, 2005, for the hearing on the preliminary
 23 injunction. Plaintiffs state that they oppose a hearing on that date. They have not indicated they
 24 are not available that date. Rather, plaintiffs oppose a later hearing date because the law at issue
 25 will go into effect on January 1, 2006, if a preliminary injunction is not issued.

26 The County defendants respectfully request that the hearing date for the preliminary
 27 injunction be continued one week, based on the unavailability of counsel. Local Rule 7-10.
 28 The County defendants request that the hearing on the preliminary injunction be continued to

1 December 9, 2005. It appears that all counsel are available that day.

2 The County defendants also request that opposition briefs be due on November 18, 2005.
 3 Currently, defendants' opposition briefs are due on Thursday, November 10, 2005, because
 4 Friday, November 11, 2005, is a holiday. Plaintiffs' motion for preliminary injunction presents
 5 complicated First Amendment issues. In addition to their pleadings, plaintiffs have submitted
 6 nine declarations as well as videos.

7 **III.**

8 **CONCLUSION**

9 The County Defendants respectfully request that the hearing date be moved to December
 10 9, 2005, based on the unavailability of their counsel. The County defendants also request that
 11 defendants' opposition papers be due on or before November 18, 2005.

12 Dated: November 7, 2005

Respectfully submitted,

13 ANN MILLER RAVEL
County Counsel

15 By: /S/
16 KATHRYN J. ZOGLIN
Deputy County Counsel

17 Attorneys for Defendants
18 SANTA CLARA COUNTY
19 DISTRICT ATTORNEY GEORGE
KENNEDY AND SANTA CLARA
COUNTY COUNSEL ANN MILLER
RAVEL, in their Official Capacities

21 **DECLARATION OF KATHRYN ZOGLIN**

22 1. I am a Deputy County Counsel assigned to handle the response to and hearing for the
 23 preliminary injunction in the above-entitled matter. I am handling this matter at this stage of the
 24 case because the attorneys who normally handle litigation cases are not available.

25 2. I am not available on December 2, 2005. I am handling a labor arbitration matter
 26 that was set in June 2005 and thus have been told that it cannot be changed.

27 3. I have spoken with Zack Morazzini, counsel for the Attorney General's Office;
 28 Robert Fabela, counsel for the San Jose City Attorney's Office; and Ethan Dettmer, counsel for

plaintiffs, to advise them that I am not available on December 2, 2005 for the hearing on the preliminary injunction.

4. Counsel for the defendants are available for hearing on the following Friday, on December 9, 2005. They have no opposition to my request that the matter be continued one week.

5. Mr. Dettmer advised me that his clients oppose a hearing on December 9, 2005. Mr. Dettmer did not indicate that plaintiffs' counsel are not available on December 9, 2005. Rather, he stated that his clients oppose that date because the law at issue will go into effect on January 1, 2006, if a preliminary injunction is not issued.

6. I request that defendants' opposition briefs be due on November 18, 2005. Currently, defendants' opposition briefs are due on Thursday, November 10, 2005, because Friday, November 11, 2005, is a holiday. Plaintiffs' motion for preliminary injunction presents complicated First Amendment issues. In addition to their pleadings, plaintiffs have submitted nine declarations as well as videos.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Jose, California, on November 7, 2005.

/S/

ORDER

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:

The hearing on the preliminary injunction is continued to December 9, 2005, at 9:00 a.m.;

Defendants' opposition briefs are due on or before November 18, 2005; and

Plaintiffs' reply brief, if any, is due on or before November 25, 2005.

Dated: _____

HONORABLE RONALD M. WHYTE
United States District Court Judge